HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI C.V.NAGARJUNA REDDY

WRIT PETITION No.20711 of 2006

Between:

Rakesh Sharma
and another

… Petitioners

AND

The Commissioner,
Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad,
and others

… Respondents

ORDER

Counsel for petitioners : Shri P.Shiv Kumar

Counsel for respondents Nos.1 and 2: Shri G. Rama Rao

16-10-2006

Per G.S.Singhvi, CJ

In this petition, the petitioners have prayed for issue of a mandamus to respondent Nos.1 and 2 to demolish the illegal construction made by respondent No.3 on the property bearing municipal No.21-1-211 measuring about 100 square yards situated at Rikabgunj, Hyderabad.

At the commencement of hearing, Shri G. Rama Rao, learned counsel for respondent Nos. 1 and 2 produced a copy of sanctioned building plan pursuant to which respondent No.3 is said to be raising construction.

Shri P. Shiv Kumar, learned counsel for the petitioners argued that the construction being raised by respondent No.3 is liable to be declared illegal because he has not only violated the sanctioned plan by not leaving the prescribed set backs but has also encroached on the public street. He then submitted that the Court may restrain respondent No.3 from continuing the construction activities else the petitioners will suffer irreparable injury.

We have considered the submission of the learned counsel, but have not felt persuaded to accept the same because the averments contained in the affidavit of petitioner No.1 - Rakesh Sharma and the record of the case do not support the argument of the learned counsel. It is neither the pleaded case of the petitioners nor any evidence has been produced before the court to show that respondent No.3 had encroached on the public street or that he is raising construction in violation of the sanctioned plan.

Insofar as the allegation of making construction without leaving mandatory set backs is concerned, we are convinced that the only remedy available to the petitioners is to approach the competent civil

court for adjudication of their grievance because, in exercise of power under Article 226 of the Constitution of India, this Court cannot investigate into the issues of facts which can appropriately be decided after giving opportunity to the parties to lead oral and documentary evidence.

For the reasons stated above, the writ petition is dismissed leaving the petitioners free to avail the remedy by filing suit in the competent civil court.

As a sequel to dismissal of the writ petition, W.P.M.P.No.26243 of 2006 filed by petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

16-10-2006

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